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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,573	10/28/2003	Frederick James Diggle III	030569	5326

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EXAMINER

BOCHNA, DAVID

ART UNIT	PAPER NUMBER
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3679

DATE MAILED: 01/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/695,573

Applicant(s)

DIGGLE, FREDERICK JAMES

Examiner

David E. Bochna

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 120 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed 12/12/03 fails to comply with 37 CFR 1.98(a)(1), which requires a list of all patents, publications, or other information submitted for consideration by the Office. It has been placed in the application file, but the information referred to therein has not been considered. A copy of the Patent application with express mail label EU990163769US must be supplied.

Specification

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The phrase "A pipe holder is disclosed should be removed from the abstract".

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 10 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 10 and 11, it is unclear how a third opening can be claimed when a second

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opening has not yet been recited in a claim from which claims 10 and 11 depend.

Claim 11 depends from itself.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Ready.

In regard to claim 1, Ready discloses a body member, wherein the body member defines an opening 28 proximate a first end of the body member; and

a support member 23 connected to and extending away from the body member.

In regard to claim 12, wherein the support member includes a hook portion 27 proximate a second end of the support member.

7. Claims 1-2 and 4-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Appleton.

In regard to claim 1, Appleton discloses a body member, wherein the body member defines an opening (space between 15 and 16) proximate a first end of the body member; and

a support member (portion of 26 where screw 19 is attached) connected to and extending away from the body member 10.

In regard to claim 2, wherein the pipe holder is fabricated from a metal.

In regard to claim 4, wherein the opening (space between 15 and 16) is a circular-shaped opening.

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In regard to claim 5, wherein the body member defines a second opening (right most 20 in fig. 2).

In regard to claim 6, wherein the second opening is a threaded opening.

In regard to claim 7, the second opening is positioned between the support member and a second end 26 of the body member.

In regard to claim 8, wherein the body member further includes a hook portion (extension on 26 that holds screw 28) proximate a second end of the body member.

In regard to claim 9, wherein the support member extends perpendicularly from the body member.

In regard to claim 10, wherein the support member defines a third opening (other hole 20 that holds screw that holds 10).

In regard to claim 11, wherein the third opening 20 is a threaded opening.

8. Claims 13-18 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Maloney.

In regard to claim 13, Maloney discloses a ladder, comprising:

A first and second side rails 20;

a cross member 26 connected to the first and second side rails; and

a pipe holder 10 connected to the cross member, wherein the pipe holder includes:

a body member 10, wherein the body member defines an opening proximate a first end of the body member; and

a support member 14 connected to and extending away from the body member.

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In regard to claim 14, wherein the pipe holder is removeably connected to the cross member.

In regard to claim 15, wherein the pipe holder is removably connected to the cross member with a set screw (see fig. 7).

In regard to claim 16, wherein the pipe holder is removably connected to the cross member with an elastic hook 224 (see fig. 8).

In regard to claim 17, wherein the pipe holder is fixedly connected to the cross member.

In regard to claim 18, wherein the pipe holder is fixedly connected to the cross member with a fastener 218, 224.

In regard to claim 20, Maloney discloses a ladder, comprising:

first and second side rails 20;

a cross member 26 connected to the first and second side rails; and

a pipe holder 10 connected to the cross member, wherein the pipe holder includes:

a body member 10, wherein the body member includes means 58 for allowing a length of pipe pass therethrough; and

a support member 14 connected to and extending away from the body member.

Claim Rejections - 35 USC § 103

9. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Appleton.

Appleton discloses a pipe holder made of metal, but not plastic. However, it would have been obvious to make the pipe holder out of plastic because the selection of a known material based upon its suitability for the intended use is a design consideration within the skill of the art. In re Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960).

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10. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Maloney. Maloney discloses a pipe holder as described above, but does not disclose that it is integral. However it would have been obvious to make the pipe holder integral because one-piece construction, in place of separate elements fastened together, is a design consideration within the skill of the art. In re Kohno, 391 F.2d 959, 157 USPQ 275 (CCPA 1968); In re Larson, 340 F.2d 965, 144 USPQ 347 (CCPA 1965).

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lloyd, Kumakura, Sugaya, Thompson, Grant, Vindal, Blaw, Dottl et al., and Robinson all disclose similar couplings common in the art.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Bochna whose telephone number is (703) 306-9040. The examiner can normally be reached on 8-5:30 Monday-Thursday and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (703) 308-2686. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2168.



David Bochna
Primary Examiner
Art Unit 3679
December 21, 2004